

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 2605 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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BHIKHABHAI J VASAVA & OTHERS
Versus
O N G C & ANOTHER

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Appearance :

MR NR SHAHANI for Petitioners.

NONE for Respondent No.1,

MS KJ BRAHMBHATT for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 30/07/2007

ORAL JUDGMENT

The following question was referred to the Presiding Officer, Industrial Tribunal [Central] at Ahmedabad:

“Whether the demand of the workmen of the Canteen in Ankleshwar project ONGC to treat them as employees of ONGC is justified? If so, to what relief are the concerned workmen entitled and from what date?”.

After receiving the Reference, the Industrial Tribunal registered the matter as Reference [ITC] No. 14 of 1985. After giving due opportunity of hearing to the parties, the Tribunal made its award on 30.12.89 directing that the employee of the Canteen are employees of the present respondents; that the respondents are obliged to give all the benefits and amenities including pay etc. to the employees working in the canteen at par with other employees of the opponent working in the Ankleshwar Project. The Industrial Tribunal, however, made the award prospective in operation and made it effective from 01.01.90.

It appears that the employer ONGC, being aggrieved by the said award, came to this Court in Special Civil Application No. 7110 of 1990. The petition came to be dismissed summarily by a Division Bench of this Court on 04.10.90. The order was confirmed by the Apex Court in Petition for Special Leave to Appeal /91 (CC) 13998. For the respondents, therefore, the matter has come to an end.

The petitioners, after entering the services, came to this Court with a submission that the learned Industrial Tribunal was unjustified in making the award prospective in operation.

Shri N.R. Sahani, learned counsel for the petitioner placed strong reliance upon rule 10B.(10) of the Industrial Disputes [Central] Rule, 1957 to contend that if the award is not delivered within one month from the date of oral hearing, that part of the award would be bad. According to him the matter was heard on 11.04.88 and since thereafter the award was not made within one month, for the lapses of the Court in making the award, the petitioners could not be held liable.

Ms. K.G. Brahmhatt, learned counsel for the respondents on the other hand submitted that the Court below had exercised its discretion in accordance with law and as the petitioners have come to this Court in 1992 and that too after securing the benefits under the award, this Court must hold that the petitioners have abandoned their rights and have given up their claims.

So far as the application of rule 10B.(10) of the Industrial Disputes [Central] Rule, 1957 is concerned, the arguments, in the opinion of this Court, is absolutely fallacious and misconceived. If the argument is to be accepted and it is held that the Industrial Tribunal would have no jurisdiction to make the award after one month from the date of hearing, then the whole award would have to be set aside. If I accept this argument, then I will be granting a larger relief to the respondents which they themselves could not secure in their writ application. In the zeal to convince the Court, a counsel is required to raise an argument which is available to the party under the law. The counsel is not required to argue what goes contrary to law. Rule

10B.(10) simply provides that the award would be made within one month and would be referred to the Central Government. The rule does not say that if an award is not made within one month of the hearing, then such award would be an illegal piece of paper, the award would have no effect, and would be a bad award liable to be quashed. I reject the said argument.

So far as the date of operation of the award is concerned, Mr. Sahani has relied upon a Division Bench judgment of this Court in the matter of SARABHAI CHEMICALS STAFF ASSOCIATION vs. SARABHAI CHEMICALS & ANOTHER, 1984(1) GLR 566. Making reference to paragraph 57 of the judgment, he submits that further principles have been laid down by the Division Bench and in accordance with such principles, Labour Court/Industrial Tribunal should award benefits.

Paragraph 57 of the said judgment reads as under:

"57. Regarding the effective date of benefits, the following principles are deducible:

- (a). Benefits can be granted with effect from the date of the demand or from a date as demanded.
- (b). Retrospective operation implies operation from a date prior to the date of reference not from a date after the date of reference.
- (c). Ordinarily, the award should be effective at least from the date of the Reference, and in exceptional circumstances, it can be retrospective.
- (d). Only in very special circumstances and for strong and valid reasons, an exception or departure can be made for giving a later effective date.

- (e). Lapse of time in adjudication or loss in the industry by themselves are no valid grounds for making a departure from the normal rule.
- (f). In exercise of the judicial discretion, if a Tribunal fails to apply these principles, the same can be corrected under Arts. 226 & 227 as being unreasonable exercise of discretion."

Contending contrary to the submission of Mr. Sahani, Ms. K.G. Brahmbhat submitted that once the subordinate court has exercised its discretion which is available to it within its jurisdiction, then unless it is shown that the discretion was illegally exercised, a writ court under Article 227 of the Constitution of India, should not make any interference.

In the present matter, the Reference came to be made in 1985. The matter remained pending before the learned Labour Court for almost about 4, 4.1/2 years. The matter was finally heard on 11.04.88 and the judgment came to be delivered on 30.12.89, i.e. about 1 year and 8 months after the parties were heard.

In a case like the present where the lower Court simply says that retrospective effect is not required to be given and does not supply the reasons therefor, then the High Court would be justified in holding that the court below has not exercised its discretion in accordance with law. The Court is entitled to make the award enforceable from the date of the Reference, from the date of the cause of action, and from the date of the award itself. The ordinary rule is that it should be given effect from the date of the Reference or from any

time subsequent to the date of Reference. In the present case, in my opinion, the award should be made effective from 01.06.88 because much before that date, arguments of the parties were already heard. It would be trite to say that one cannot be allowed to suffer because of a wrong on the part of the Court. In the present matter, if the Labour Court was vigilant, it could have delivered the award somewhere in May or June 1988, enabling the petitioner to get the benefits due under the award.

Taking into consideration the totality of the circumstances, I hereby direct that the award should become effective from 01.06.88. The petition is allowed to the extent indicated above.

Rule made absolute accordingly. No costs.

[R.S.GARG, J.]

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